

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Comprehensive Review of Universal Service Fund)	WC Docket No. 05-195
Management, Administration, and Oversight)	
)	
Federal-State Joint Board on Universal Service)	CC Docket No. 96-45
)	
Schools and Libraries Universal Service Support)	CC Docket No. 02-6
Mechanism)	
)	
Rural Health Care Support Mechanism)	WC Docket No. 02-60
)	
Lifeline and Link-Up)	WC Docket No. 03-109
)	
Changes to the Board of Directors for the)	CC Docket No. 97-21
National Exchange Carrier Association, Inc.)	

REPLY COMMENTS OF AT&T INC.¹

1. The Commission Should Codify All of the Rules and Requirements Governing the E-Rate Program.

While the comments in this proceeding reflect a diversity of opinion on the extent and type of reforms needed to ensure efficient and effective administration of the Commission's universal service fund and support mechanisms, there is at least one point on which all appear to agree; that is, the need for the Commission to establish a comprehensive and centralized repository of the rules and requirements governing the E-rate program. As we pointed out in our comments, the lack of clear guidance concerning the rules and requirements governing the Commission's universal service support mechanisms cause much of the inefficiencies and waste in program

¹On November 18, 2005, SBC Communications Inc. closed on its merger with AT&T Corp. The resulting company is now known as AT&T Inc. In these comments, "AT&T" refers to the merged company and its wholly-owned subsidiaries, including its ILEC operating subsidiaries, unless otherwise noted.

administration.² These ambiguities often force USAC to address issues in an *ad hoc* manner and to make policies and rules, rather than simply executing the Commission's rules, which inevitably results in considerable delay and waste of resources as parties seek administrative review and guidance from the Commission. Nowhere is this problem more pronounced than in the E-rate program.

Plainly, the schools and libraries program would operate more efficiently, and would not be plagued with the uncertainty and delay that currently afflict the E-rate support mechanism, if the Commission were to establish a centralized and easily accessible repository for all of the rules and requirements governing the E-rate program, including any rules from other federal programs that apply to the E-rate program, as several parties suggest.³ In addition, as both AT&T and the Arkansas E-Rate Work Group observed, the rules must be clear, concise and up-to-date to avoid any ambiguities concerning program implementation.⁴ SBC believes that the best way to achieve this goal is for the Commission to adopt clear and concise rules, set forth in the code of federal regulations, implementing all of the procedures, policies and other requirements governing the E-rate program. These rules should be updated as needed, and made available through a searchable database on USAC's website, together with links to relevant Commission orders and other pertinent information to minimize any uncertainty concerning program requirements.

² Comments of SBC Communications Inc. at 4-5 (hereinafter AT&T Comments).

³ See Arkansas E-Rate Work Group at 5; Verizon at 19; SECA at 14; Chicago Public Schools at 25.

⁴ AT&T Comments at 4-5; Arkansas E-Rate Work Group at 5.

AT&T recognizes that, despite these measures, some ambiguities inevitably will remain. As a consequence, AT&T agrees with the Chicago Public Schools that program participants should be able to rely on any guidance or other information provided to them by USAC and/or Commission staff regarding program requirements in any subsequent audits or appeals of funding decisions.⁵ Given the complexity of the rules and requirements governing the E-rate program, applicants and service providers should not be penalized by being denied funding or forced to refund E-rate funding insofar as they have reasonably relied on any written guidance provided by USAC or Commission staff.

2. The Commission Should Ensure that any Performance Metrics Applicable to the E-Rate Program do not Encourage USAC to Reject Invoices to Avoid Poor Performance Results.

In its comments, USAC supported development and implementation of performance measurements to gauge its performance administering the universal service fund and the Commission's universal service support mechanisms. For the Schools and Libraries program, USAC encouraged the Commission to adopt, *inter alia*, a performance measurement to assess the time it takes USAC to process and pay E-rate invoices, which would be measured based on "submission to payment date."⁶

AT&T generally supports adoption of performance measures to assess USAC's performance, but is concerned that USAC's proposal for evaluating its timeliness in paying invoices could encourage the Schools and Libraries Division (SLD) to prematurely reject invoices to avoid poor performance results. In particular, AT&T is concerned that adoption of such a measure will encourage SLD to establish unrealistic

⁵ Chicago Public Schools at 25.

⁶ USAC at 100.

deadlines for service providers to respond to requests for additional information (which may include information or certifications that are not in the service provider's possession) during the invoice review process, and to reject invoices when a service provider cannot meet those deadlines rather than miss a performance interval for processing invoices.

AT&T's concerns are not merely hypothetical. Under existing USAC processes, the SLD can, and often does, request a service provider to submit additional information that is not in the service provider's possession, and which cannot be obtained within the short time frame provided for a response, to support amounts invoiced to USAC as part of the invoice review process. AT&T, for example, recently was asked by USAC to provide copies of the front and back of a check used by an applicant to pay the non-discounted portion of an invoice, which required AT&T to approach the applicant and its financial institution to retrieve a copy of the back of the check (which AT&T does not routinely retain). This placed AT&T at the mercy of both the applicant and its financial institution, and at risk of having its invoice rejected based on circumstances entirely beyond its control. Likewise, AT&T often has been asked during the invoice review process to provide a certification by the customer that services invoiced to SLD were delivered. In these cases, AT&T again has been placed at the mercy of the applicant, and at substantial risk of having its invoice rejected if the applicant fails to submit the certification to the SLD within the short time frame typically afforded by USAC for a response.

In order to avoid the risk that the SLD will prematurely reject invoices about which it has questions without providing service providers a reasonable opportunity to submit additional information during the invoice review process, the Commission should

require that, during the invoice review process, USAC only may request additional information that service providers specifically are required to retain under the Commission's rules. In addition, USAC should not be permitted to reject an invoice if a service provider has not produced requested information or documentation that is outside the control of the service provider (such as where the SLD requests a certification by the applicant that services have been delivered). Moreover, the Commission should require applicants to respond promptly to any such requests for documentation or information (without holding the service provider hostage) or risk suspension or debarment from the E-rate program. Failure to adopt these reasonable measures along with any performance metrics will only increase waste and inefficiency in the E-rate program by increasing the number of invoice appeals that must be reviewed and decided by USAC (and, likely, the Commission).

3. The Commission Should not Require Applicants to Countersign SPIFs.

AT&T strongly opposes the proposal by the Chicago Public Schools that the Commission require service providers to obtain the signature of applicants on the SPIF in order to ensure that service providers do not bill for services that have not been fully delivered. While this proposal may appear to be a reasonable means of promoting accurate invoicing in theory, AT&T is concerned that, in practice, some applicants might abuse any such requirement by refusing to countersign the form unless their service provider agrees to make concessions regarding unrelated matters. Here again, AT&T's concern is not hypothetical. Just last year, AT&T was held hostage by a school system that refused to sign a service certification, which was required for AT&T to obtain reimbursement of discounts for services that were undisputed, unless AT&T agreed to

make concessions regarding matters that the school system itself acknowledged were wholly unrelated to E-rate projects. The countersignature requirement proposed by the Chicago Public Schools would be an invitation to this type of abuse by applicants seeking to extract concessions from service providers.

The countersignature requirement also is impractical. Many companies, like the AT&T operating companies, generate SPIFs mechanically, and submit them electronically to the SLD as encrypted data files. Consequently, there is no physical form for the customer to sign. Requiring service providers to obtain applicants' countersignature on the SPIF would require them to expend significant resources to modify their systems to produce paper SPIFs, introducing additional delays and inefficiencies into the process, which runs directly counter to the goals of this proceeding.

4. The Commission Should Grant AT&T Corp.'s Petition for Clarification, or, in the Alternative, Waiver, that its On-Line Reimbursement Process is Permitted Under the Commission's Rules.

Almost two and a half years ago, AT&T Corp. filed a petition asking the Commission to clarify that its on-line reimbursement process for e-rate customers that choose to use the SPIF process complies with the Commission's rules, or, in the alternative, to waive the rules to the extent necessary to allow AT&T Corp. to continue offering this process to customers in place of the standard SPIF process.⁷ As AT&T Corp. explained, because its billing systems were incapable of billing customers only the non-discounted portion of the bill without extensive changes to multiple, legacy systems, AT&T implemented the on-line reimbursement process for those E-rate customers that did not want to pay the full price of supported services and then seek reimbursement

⁷ AT&T Petition for Clarification or, in the Alternative Waiver, CC Docket No. 02-6 (filed July 21, 2003) (AT&T Petition).

through the BEAR process for the discounted portion of their bills.⁸ The on-line process allows a customer to go to AT&T Corp.'s E-rate website and request a refund from AT&T in the amount of the E-rate discount *before* payment of the customer's bill is due. If a customer requests a refund as soon as it receives the AT&T bill, the customer will receive a refund in plenty of time to pay its current AT&T bill, and thus, in effect, pay only the non-discounted portion of the cost of supported services.⁹ Accordingly, while AT&T's on-line reimbursement process operates somewhat differently from the standard SPIF process, it fully achieves the purpose of the SPIF process, which was to provide E-rate customers a billing option that would not require them to pay up-front and in full for E-rate services, which, in turn, could create cash flow problems for schools and libraries – particularly those that are most disadvantaged.¹⁰

In its comments, SECA urges the Commission to deny AT&T's petition on the ground that, "[i]f service providers are permitted to use a substitution for discounted billing, none would ever take the steps necessary to finally provide discounted bills as the Commission intended in its original order."¹¹ SECA ignores the fact that the Commission did not adopt the SPIF process simply to provide E-rate customers the option of receiving "discounted bills." Rather, it did so to avoid the risk that many schools and libraries, especially those most in need of assistance, might not be able to afford to pay for E-rate services up-front and in full, and thus might not be able to take

⁸ *Id.*

⁹ *Id.* at 4-5.

¹⁰ *Universal Service Order*, 12 FCC Rcd 8776, 9083 (1997).

¹¹ SECA at 40-41.

advantage of the program.¹² AT&T's on-line reimbursement process fully addresses this concern by providing customers the amount of the E-rate discount to which they are entitled before payment of their AT&T bill is due.

In any event, customers that have used the on-line process have been quite satisfied with it.¹³ And even SECA itself previously has voiced support for that process, stating "we applaud AT&T for their on-line reimbursement process. Those applicants that have chosen to use it have reported to us that they appreciate its ease of use."¹⁴ The Commission therefore should grant AT&T's petition.

Respectfully submitted,

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¹² *Universal Service Order*, 12 FCC Rcd at 9083.

¹³ AT&T Petition at 6.

¹⁴ AT&T Reply to Comments on its Petition for Clarification or, in the Alternative, Waiver at 3 (filed Sep. 4, 2003) (citing SECA Reply Comments at 8).